SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 693.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA ON THE RELATION OF W. T. MOSIER AND LOUISA MOSIER.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3422.

JOHN BARTON PAYNE, Secretary of the Interior, Appellant,
vs.
THE UNITED STATES OF AMERICA on the Relation of W. T. MOSER and LOUISA MOSER.

a Supreme Court of the District of Columbia.

At Law. No. 62494.

THE UNITED STATES OF AMERICA on the Relation of W. T. MOSIER and LOUISA MOSIER, Plaintiffs,
vs.
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:—

1 *Petition for Writ of Mandamus.*

Filed May 31, 1919.

In the Supreme Court of the District of Columbia.

At Law. No. 62494.

THE UNITED STATES OF AMERICA on the Relation of W. T. MOSIER and LOUISA MOSIER, Plaintiff,
vs.
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

To the Supreme Court of the District of Columbia:

Your petitioner would respectfully show:
1st. That W. T. Mosier and Louisa Mosier are members of the Osage Tribe of Indians in Oklahoma, and are duly and regularly

enrolled as members of said Tribe under and by virtue of the Act of Congress of June 28th, 1906 (34 Stat. L., 539), and are now maintaining tribal relations with said Tribe, their enrollment numbers with said Tribe being respectively, No. 1566 and No. 1567.

That John T. Mosier, Edwin P. Mosier, Luther C. Mosier and Agnes C. Mosier are also members of the Osage Tribe of Indians, and their enrollment numbers with said Tribe are No. 1569, No. 1570, No. 1571 and No. 1572, respectively.

That W. T. Mosier and Louisa Mosier, for whom this action is brought, are the parents of said John T. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, who are minors, and as such parents, they have the care, custody, control and keeping of said minors, and the same are now in their custody and control.

2nd. That Franklin K. Lane, the defendant, is the duly appointed, qualified and acting Secretary of the Interior of the United
2 States of America, and is sued as such Secretary of the Interior.

3rd. That John T. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, the minors above referred to, under and by virtue of the Act of Congress of June 28th, 1906 (34 Stat. L., 539-545), have been allotted each his respective part of the lands belonging to the Osage Tribe of Indians in Oklahoma, and said lands are now in the custody and control of W. T. Mosier and Louisa Mosier, for whom this action is brought. That, in addition to being allotted each his respective share of said lands, there was allotted to each one of said minors his respective share of the fund known as the "trust fund," which was held by the Government of the United States in trust for the Osage Tribe of Indians, and which was distributed and allotted among the members of the Osage Tribe of Indians, in accordance with the Act of Congress of June 28th, 1906, supra. That in said Act of Congress, it was provided that all the moneys that should become due, should be held in trust by the United States for a period of twenty-five years from and after the first day of January, 1907, except as otherwise provided. It was otherwise provided in said Act of Congress that the moneys coming due as interest on the trust fund above referred to, should be paid to the members of said Tribe, except in cases of minors, in which event the money should be paid to the parents of said minors until said minors arrived at the age of twenty-one years; provided, that if the Commissioner of Indian Affairs should become satisfied that the interest of said minor was being misused or squandered by said parent, in that event, he may withhold the payment of such interest. It was also provided in said Act of Congress that the royalty received from oil and gas, coal, and
3 other mineral leases on the lands of the Osage Tribe of Indians, and moneys received from sale of townsites, and from sale of certain tracts of land, and moneys received from grazing lands, should be placed in the Treasury of the United States, and the same distributed among the members of the Osage Tribe of Indians, in the same manner and at the same time that the annuity or interest payments were made. The exceptions as to what money should be held in trust by the Government of the United States for twenty-five

years, were the two exceptions—one with reference to the interest on the trust fund, and the other with reference to the royalties received from minerals, and from the sale of certain lands and townsites, and rents received from grazing lands. All other moneys should be held in trust by the Government of the United States. In other words—the funds were divided into the fund that was to be held in trust, and that fund that was to be paid out. The only authority given for withholding the payment of the minors' money, either interest or other moneys provided for, was in case the Commissioner of Indian Affairs should become satisfied that the interest of the minor was being misused or squandered.

4th. That, by virtue of said Act of Congress of June 28th, 1906, supra, W. T. Mosier and Louisa Mosier were given the right to receive the annuities, royalties and other moneys, except the trust fund, of said John C. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, their minor children, unless the Commissioner of Indian Affairs should become satisfied that they were misusing or squandering said money.

For many years prior to the passage of the Act of Con-
4 gress of June 28th, 1906, supra, when all the lands which were the property of the Osage Tribe of Indians, were held in trust by the Government of the United States for said Tribe, and each member of said Tribe had a common interest therein, it was the custom and policy of the Government, in accordance with the long established relationship between the Government and the Osage Tribe of Indians, and under the law authorizing and directing the Secretary of the Interior to pay the annuities or interest and royalties, and rents from grazing lands, to pay the shares of the minor members of said Tribe to the parents of said minors, and in case the parents were misusing or squandering the shares of said minors, then it was the policy and custom of the United States, through its officers, to withhold from said parents the minors' shares until the officers in charge were satisfied that the parents were not misusing or squandering the same; and it was the long established custom and policy, both of the United States and of the Indians, to permit the parents in receiving the funds coming as the shares of their minor children, to use the same as they saw fit, so long as the same were not misused or squandered, and each child's share was not expended, or required to be expended for the special benefit of said child, nor for the particular benefit of any member of the family, but the said parents used the money as their own money, in the transaction of their business affairs, and in the investment of the same, and in providing the means of support for the entire family.

It had long been recognized by the Government, that in order to enable the Indian to successfully cope with his more astute and energetic white brother, and in order to properly educate and raise
his children, and in order to enable him to accumulate prop-
5 erty, that it was necessary for him to have some superior advantage, and in order to give parents of Osage minor children this superior advantage over the white man, it was deemed proper and right to pay to the parent, not only his own income from tribal

sources, but also the income from the minor members of his family, subject, of course, to a wise supervision on the part of the Government that the parents should be required to not misuse or waste said funds.

The Act of Congress of June 28th, 1906, was and is but a continuation of said long established custom and policy of the Government of the United States, and by reason of its enactment, became mandatory upon the Secretary of the Interior to pay to the parents of minor members of the Osage Tribe of Indians the income derived from the shares of said minors, such as interest money on the trust fund, royalties from the mineral interests, moneys received from grazing lands, and the moneys received from the sale of certain lands and properties authorized by said Act. And said Act was so understood and construed at the time of its enactment by the officers of the Government, whose duty it was to enforce the same, and by the parties whose interests were affected by the passage and construction of the same. That long established policy of the Government in dealing with the affairs of the minor Osage Indians, became the statutory law by the passage of said Act of Congress of June 28th, 1906, supra, and for more than ten years thereafter the Secretary of the Interior paid to the parents of the minor members of said Tribe, including the parents for whom this action is brought, all of the income due as interest on the trust fund for said children; all of the royalties received from oil and gas and other min-
6 erals, and from grazing lands, and all of the funds received from the sale of certain townsites mentioned in said Act, and the same stood as the interpretation of said Act of Congress for said period of time by both the Secretary of the Interior and the Osage Tribe of Indians. That since the — day of June, 1917, the Secretary of the Interior has refused and still refuses and will continue to refuse to pay to these parents for whom this action is brought, all the royalties received from oil and gas, but is withholding a part of the same contrary to said Act of Congress, supra. That the Secretary of the Interior now has a large amount of money, the exact amount plaintiff does now know, but alleges it to be more than three thousand dollars, which is money coming from the shares of said minors, which he refuses to pay to W. T. Mosier and Louisa Mosier, although they are entitled to the same.

5th. On April 30th, 1917, with a view of putting a different construction from what had theretofore been put upon said Act of Congress, the Secretary of the Interior issued an order, directing that the parents of minor members of the Osage Tribe of Indians should make a statement showing what use had been made of the money received from the minors' share by such parents, at the quarterly payment previous; and subsequent to that date, to-wit: February 15th, 1918, another order was issued by the Secretary of the Interior with reference to the moneys derived from the children's shares, in which the Secretary of the Interior sought to compel the parents of minor members of the Osage Tribe of Indians, and in particular W. T. Mosier and Louisa Mosier, above referred to, to expend the money received from each child's share, for the special

and sole benefit of said child, and if the said parents did not
7 so expend the money, then it would be deemed by the Commissioner of Indian Affairs to be a misuse or a squander of said money, and further payments from the income of the minor members shares would be withheld from such parents, except the amount of $40.00 per month out of the income of each child's share. That while said order of February 15th, 1918, was directed to each parent of Osage children, yet it was especially directed to W. T. Mosier and Louisa Mosier, for whom this action is brought. It is further made to appear that W. T. Mosier and Louisa Mosier are sober, industrious and frugal people; that they have in nowise misused or squandered the moneys paid to them as parents of said minor members of the Osage Tribe of Indians, and the Commissioner of Indian Affairs has not found that W. T. Mosier and Louisa Mosier have misused or squandered any part of the moneys coming to John T. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, from the shares of said minors, but withholds the same from W. T. Mosier and Louisa Mosier until the said W. T. Mosier and Louisa Mosier show that the interest coming from each minor's funds has been expended solely and only for the benefit of said minor, or that the further payments of the interest of said minors will be expended and used exclusively for the benefit of such minor. That after making a statement, as required, showing that the moneys that have been paid to the said W. T. Mosier and Louisa Mosier, as parents of their said minor children, showing that the moneys so paid were used for the exclusive benefit of each child, the Secretary of the Interior then would only pay to the said W. T. Mosier, and Louisa Mosier that part of the income of said minor children known as the interest on their trust fund, and that part of the royalty received from oil and gas, known as the one-sixth royalty,
8 but refused and still refuses to pay to the said W. T. Mosier and Louisa Mosier that part of the royalty received from oil and gas mineral leases know as "bonus money," and has in the past required the said W. T. Mosier to take out Letters of Special Guardianship on behalf of each of said minors for said money so designated as bonus money, notwithstanding there was and is no authority in law for the appointment of a special guardian of said fund, or for the payment to such special guardian of said fund. In April, 1919, there was made to the members of the Osage Tribe of Indians a payment of royalties from oil and gas minerals, said payment being made from what was designated "bonus money" on said oil and gas leases, but the Secretary of the Interior refused and still refuses to pay to the said W. T. Mosier and Louisa Mosier the amount of said royalty designated as "bonus money," and amounting to $715.00 for each of said children, or a total amount of $2,860.00, and there is now due to the said W. T. Mosier and Louisa Mosier, as parents of said children, another amount of royalty from oil and gas minerals of approximately $500.00 for each of said children, or a total of $2,000.00, which the said Secretary of the Interior refuses to pay to the said W. T. Mosier and Louisa Mosier, and the action of the Secretary of the Interior in so withholding said pay-

ment to W. T. Mosier and Louisa Mosier is contrary to the said Act of Congress of June 28th, 1906, supra; is not warranted by law; is not based upon a finding of the Commissioner of Indian Affairs that said money was being misused or squandered, but is solely and entirely based upon a misinterpretation and misconstruction of said Act of Congress, and contrary to the spirit and intention thereof.

9 As showing the reasons for the order of February 15th, 1918, of the Secretary of the Interior to J. Geo. Wright, Superintendent of the Osage Indian Agency, and in support of the allegation that said moneys were not being withheld from W. T. Mosier and Louisa Mosier because they were misusing or squandering the same, we quote from said order as follows:

"With the view of ascertaining whether moneys belonging to minor Osage Indians were being misused or squandered, you were directed by letter dated April 30, 1917, to require parents to make written accountings of each minor's money received by such parent at the previous quarterly payment, showing what disposition had been made of the funds received, before future payments of minor's shares would be made. This action was taken in view of the provisions contained in Section 4 of the Act of June 28, 1906, (34 Stat. L. 539-545), which reads in part as follows:"

* * * * * * *

"Under date of August August 1, 1917, you were given instructions as to the proper method of construing the order of April 30th, and an interpretation was placed upon the former instruction as to what would constitute a satisfactory showing by the parents of the expenditure of their minor children's funds."

"In connection with the foregoing order, you were requested to endeavor to impress upon parents the fact that the funds of their minor children belonged absolutely to the children, and as such must not be expended either for the sole benefit of the parents or for the benefit of the family in general, but that the expenditures must be for the direct benefit of the minor entitled thereto. I have carefully considered the numerous accountings made by the parents of the expenditure of their children's funds, and I am not satisfied with the showing made."

* * * * * * *

"Under the present system of accounting for the expenditure of the minor's funds, it is impracticable if not quite impossible, to ascertain whether the funds are expended for the direct benefit of the minor entitled thereto, or for the benefit of the family in general. It is apparent from a careful study of the accounts filed that the statements are made without due regard as to the correctness of the expenditures made, but are merely made with the view of meeting the requirements laid down in letter of April 30, and sub-

10 sequent instructions. I am extremely doubtful whether this plan would ever attain the results desired, namely, the ex-

penditure of the funds for the direct benefit of the minor entitled thereto."

"After careful deliberation and analysis of the present system of accounting for the minors' funds, I am convinced that the only equitable solution of the problem lies in the appointment of a legal guardian for each minor, whose expenditures will be supervised and audited by the county court, and to which court the guardian is responsible for the expenditures made. However, under the law, guardians may be appointed for minors whose parents are living, only when the estates of such minors are being misused or wasted. In addition to the control and the proceeds of the allotments of minors, I am of the opinion that $40.00 per month, or $480.00 per year, paid to the parents is sufficient for the maintenance of such minors, and any expenditure over and above this amount will be considered a misuse of the interest of the minor."

"You are, therefore, directed in future to pay to the parents of minor Osages not to exceed the amount of $480.00 for each child for a period of one year, from such minor's share in the oil and gas royalties and interest on trust funds, and you should advise each parent that if the expenditure of a sum in excess of $480.00 per year for each minor child is desired, he should apply to the county court for the appointment of a legal guardian, on the ground that the expenditure of such a sum in the opinion of the Commissioner of Indian Affairs, constitutes a waste and misuse of the minor's interest, as provided in Section 7 of the Act of June 28, 1906, supra."

The above order was also based upon a wrong construction of law, in that there is no authority for the appointment of a guardian of a minor's estate whose parents are living, while the Secretary of the Interior evidently believed that a guardian could be appointed for that purpose, and because of that erroneous belief issued said order.

6th. That the said defendant, the Secretary of the Interior, refuses and will continue to refuse to pay to W. T. Mosier and Louisa Mosier, parents of said John T. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, all the interest and royalties coming from said minors' shares, unless by proper order of this Court, he is commanded to pay the same to said W. T. Mosier and Louisa Mosier.

7th. The plaintiff has no other plain or adequate remedy
11 at law to enforce or secure the payment of said moneys to W. T. Mosier and Louisa Mosier, except by this action.

Wherefore, the petitioner prays that the Court may issue a Writ of Mandamus to the said defendant, requiring and commanding him to pay W. T. Mosier and Louisa Mosier said moneys, or an order requiring him to show why a Writ of Mandamus should not issue to him, commanding and directing him to pay over to said W. T. Mosier and Louisa Mosier, as parents of said John T. Mosier, Edwin P. Mosier, Luther P. Mosier and Agnes C. Mosier, minor members of the Osage Tribe of Indians, all moneys derived as interest on the trust fund of said minors, and all moneys that are received from the shares of said minors as royalties and income from oil and gas and other minerals belonging to said Tribe of Indians; and that a time be fixed in which the said defendant shall show cause why said order

should not issue, and that plaintiff have all other proper relief herein.

W. T. MOSIER, *Petitioner.*
T. J. LEAHY,
C. S. MACDONALD,
G. V. LABADIE,
Attorneys for Plaintiff, of Pawhuska, Oklahoma.

STATE OF OKLAHOMA,
County of Osage, ss:

W. T. Mosier, being first duly sworn upon his oath, says:

That he is one of the above named parties for whom this action is brought; that he has read the foregoing petition and knows the contents thereof; that the allegations therein contained are true.

12 W. T. MOSIER.

Subscribed and sworn to before me this 27th day of May, 1919.

MINNIE McLAUGHLIN,
[SEAL.] *Notary Public.*

Rule to Show Cause.

Filed July 8, 1919.

* * * * * * *

Upon consideration of the petition for mandamus in the above entitled cause, it is ordered on this 8th day of July 1919, that the respondent herein show cause on or before the 25th day of July 1919, at ten o'clock A. M., and in this Court why a writ of mandamus should not issue as prayed for in said petition, provided that a copy of this order be served on said respondent on or before the 9th day of July, 1919.

F. L. SIDDONS,
Justice.

Respondent's Answer.

Filed July 25, 1919.

* * * * * * *

Comes now Franklin K. Lane, Secretary of the Interior, and in answer to relators' petition in the above-entitled action and by way of return to the rule to show cause herein issued, says:

1-3. He admits the averments of paragraphs 1-3, inclusive.

4. He admits that relators, under the act of June 28, 1906, were given the right to receive such funds or moneys belonging to their said minor children, as are directed to be paid by the terms

13 of said act, unless the Commissioner of Indian Affairs should become satisfied that relators were misusing or squandering said moneys.

Answering the averments of the second paragraph of said paragraph 4, he admits that prior to said act of 1906 it was the custom to pay to parents the minors' share of moneys subject to the condition that the same was not misused or squandered, but as to any express statutory authority for such practice he has no knowledge that any such existed; and he says that during the period mentioned in said paragraph the per capita payments were relatively small and sufficient to meet only the reasonable amount of expense incident to living and education, taking the family as a unit; and, in this connection, to what extent the averments in the third paragraph of paragraph 4 are true, he states that he has no knowledge.

Answering the averments of the concluding paragraph of said paragraph 4, he states that as to whether or not the act of June 28, 1906, was and is but a continuation of said custom and policy, in the form of legislation, he is advised, and so avers, that the same presents merely a conclusion of law. He states the facts to be that by the terms of said act he is authorized and required to pay over to the members of the Osage tribe, quarterly, (*a*) interest on the principal trust fund of the tribe, described in section 4 of said act; (*b*) royalty received from oil, gas, coal, and other mineral leases; (*c*) moneys received from the sale of town lots and the sale of three certain reservations, and (*d*) moneys received from grazing land; that such sums of this character as individually represent the
14 shares of minor children are payable to parents until the minor shall have attained the age of twenty-one years unless the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered, in which event he may withhold the payment of such sums; that it is true that for a long time his predecessors in office caused to be paid to the parents of such minors the income of the aforesaid character; but he denies that he has refused, refuses, or will refuse payment of all royalties and that he is withholding the same, save only under such circumstances as the terms of the act of June 28, 1906, require or authorize the same to be withheld. And he states the pertinent facts to be as follows: That at and for some time previous to the passage of said act of 1906, the average yearly income per capita of Osage minors was, as compared with the present, small, being in 1904, $168; in 1905, $343; in 1906, $256; in 1907, $388, and in 1908, $272; that by 1914 the income, through increase in the amounts yielded as roalties on oil and gas properties, had increased to $990.88, but had dropped to $627.30 for the year 1916; that during this period, i. e., prior to 1916, the oil and gas properties were being operated under what is known as the "Foster lease," a lease effected by act of Congress, which terminated March 16, 1916; that under the original lease, from 1896 to 1906, the royalty payable to the Osage Indians was 10 per cent and, under the renewal, from 1906 to 1916, 12½ per cent; that since said time, leases have been made to a great number of operators at increased royalties, to wit, at royalties of one-sixth of the production or, in some instances, one-fifth of the production;

that in addition oil has been enhanced in price and the pro-
15 duction in the Osage field has increased; and that as result-
ing from these facts, the per capita share of royalties per annum has increased like this: during the years ending June 30, 1917, $1,270.16; June 30, 1918, $2,045; June 30, 1919, $2,105. He further avers that for some time prior to 1917, the Commissioner of Indian Affairs was aware of the fact, and the fact was and is, that a very large number of the members of the Osage tribe of Indians are indolent, extravagant, careless in expenditure of money, and improvident; that despite a generous income, greatly in excess of the average income, such Indians as a rule were involved in financial difficulties due to unwise rather than necessary expenditures—in brief, to misuse and squandering of their income; that moved by the desire as well as charged with the duty to see that the income belonging to minor children was not squandered and misused, and being fully aware of the fact that, as alleged in paragraph 4 of the petition, parents of Osage minor children had, in times past, used such money as their own money, the Commissioner of Indian Affairs, with the written approval of the respondent, on April 26, 1917, directed the Superintendent of the Osage Agency to require parents to make a written accounting of each minor's money received by them at the previous quarterly payment, showing what disposition had been made of such payment, and, upon the coming in of such statements, to forward a full report, with recommendation such as the Superintendent deemed necessary, in those instances where proper disposition of the funds was not shown—in which event, said Superintendent would be further directed to withhold the minors' funds as provided in the act of June 28, 1906, aforesaid. He further
states that thereafter, and on July 17, 1917, the Commis-
16 ing December qcarterly payment; which said balance,
under date of August 1, 1917, addressed another communication to said Superintendent, explanatory of his directions of April 26, 1917, copy of which communication is hereto attached, marked Exhibit A, and is made a part of this return. Thereafter, and on February 15, 1918, respondent approved further instructions from said Commissioner to said Superintendent, portions of which are copied in paragraph 5 of the petition, and which, in effect, constitute a direction to pay over to the parents the sum of $40 per month from the minors' share of the quarterly payments, without any accounting, but providing that if larger sums were required for medical or educational purposes or for purchase or improvement of property for the minor, authority might be granted on a suitable showing. And finally, in this phase of the case made, the said Commissioner, on September 12, 1918, directed that quarterly statements from parents showing disposition of minors' share where paid in individual cases in excess of said $40 per month, should be required before further payments were made.

5. Answering such parts of the averments of paragraph 5 as are not covered elsewhere in his answer, he states the facts to be that prior to a date in March, 1919, relators were paid the shares of interest and royalty accruing to their said minor children in full

upon their compliance with the instructions above mentioned and upon their rendering statements showing that they had not squandered or misused said money; that the last statement filed by relator, W. T. Mozier, was dated March 7, 1919, showing that he had properly taken care of the minors' money last paid him and re-
17 questing payment of balance of payment due on the preceding December quarterly payment; which said balance, amounting to $447.75 for each child, was duly paid to him March 10, 1919; that on March 15, 1919, there became credited to each of his said minor children as quarterly shares of interest and royalty moneys, the sum of $572.75 each ($47.75, interest on Osage fund, and $525, royalty on oil and gas), all of which was duly paid to him on March 19, 1919. Yet the said relators at the time of filing said petition herein had not rendered any statement, nor have they since rendered any statement showing in what manner the aforesaid sums of $447.75 and that portion of the March quarterly payment in excess of $120 have been used or expended by them. And while he admits that until the aforesaid dates in March, 1919, the Commissioner of Indian Affairs has been satisfied, from evidence afforded by the relators, that they have not squandered or misused funds belonging to their minor children heretofore paid to them, he is without evidence, through relators' own default, to enable him to find and to say that relators have not misused or squandered moneys of said minors since said March, 1919. But he avers that all portions of interest money and royalties disbursable under the act of June 28, 1906, on account of minor children of the relator, due prior to the filing of this action, have been paid over to said relators, and that any such payments due since the filing of the petition herein, or which may hereafter become due, will be paid to said relators upon proper showing by them made under the regulations and instructions aforesaid.

And answering the further averments in said paragraph 5, relating to "bonus money," set forth on page 7 of the petition, he says
18 that since 1916, certain moneys have been received on account of the oil and gas property of the Osage Nation arising in this manner: That after the expiration of the so-called "Foster lease" in March, 1916, and after leasing portions of said property to operators then in actual possession, pursuing operations, pursuant to a plan adopted by the Council of the Osage tribe with his approval, he caused the Superintendent from time to time to offer oil and gas mining privileges as to other portions of said oil and gas mining property or territory to the highest bidders therefor; that is to say, to the party bidding the highest sum, which is called a "bonus," there would be accorded the right, within a limited territory to be described in a so-called "lease," to drill, excavate, exploit, and do all things necessary for the finding of oil or gas deposits and for the development and production of such deposits as might be found; and if said oil or gas should be found, yielding to said party so making the highest bid, the right to take and remove and sell said oil and gas, for another consideration, to wit, the payment of a fractional portion thereof to the Osage Nation as the same might be

produced; the said fractional portion, called "royalty," being fixed, under said act of 1906, by the President of the United States at one-sixth, or, in certain contingencies, at one-fifth. He further avers that due to the character of the Osage field and to the great demand and high prices for oil, he has been able to obtain for the Osages great sums of money as such "bonus," accruing at irregular intervals; that in August, 1916, the bonus money amounted to $922.69 per capita; by November, $1916, $527.13 additional, per capita; November, 1917, $882.33 additional, per capita; April, 1918, $745 additional, per capita; July, 1918, $575 additional, per
19 capita; October, 1918, $535 additional, per capita; and April, 1919, $715 additional, per capita—in all, $4,902.15 for each enrolled member of said tribe. He further avers that the term "royalty" is a term of definite meaning in oil and gas mining parlance, and is distinct from and, in Indian oil and gas mining leases, does not and never has included, "bonus" money; that when money commenced to accrue from this source, i. e., as bonus money, he sought to place the shares of minors on interest bearing deposit in the United States Treasury, but the Comptroller of the Treasury ruled that interest could not be paid on such funds. Whereupon, and lacking authority under the terms of the act of June 28, 1906, to pay such "bonus money to the parents of such minors, he directed that parents desiring to receive such shares should take out special letters of guardianship, in the proper county court, under the laws of Oklahoma; that relator, W. T. Mozier, did take out such letters and did receive payment of all "bonus" money accruing to his minor children as special guardian, down to and including the October, 1918, payment; that on January 28, 1919, the Supreme Court of Oklahoma decided that there was no authority of law for the appointment of a parent as guardian of Osage minor children by a county court; that in consequence thereof, said relator has no status as guardian to receive the April payments of "bonus" money due on account of his minor children, and, as your respondent is advised and believes and therefore avers that he is without authority of law to make such payment to relators simply as parents, the said payment of $715 on account of each of said minor children has not been made to the relators. He denies that at the time of
20 filing the petition herein, there was due to relators another amount of royalty of approximately $500 per capita, as alleged in paragraph 5 of the petition, or of any amount, which he has refused to pay to said relators. He states that in June, 1919, after the bringing of this action, the regular quarterly payment on account of interest and royalty became due and payable and he avers that the amounts credited to the minor children of relators are payable, and will be paid to relators upon their compliance with the regulations and instructions regulating such payments.

6. Answering the averments of paragraph 6, he states it is not true that, unless by proper order of this court, he will not pay to relators all interest and royalties coming from the minors' shares; on the contrary, he is ready and willing to pay from time to time such amounts as are lawfully disbursable upon relators' compliance with

the needful and proper regulations governing such payments; and he says that until relators do comply with such regulations and do afford as they have heretofore afforded the statements required under the instructions aforesaid, to the end that the Commissioner of Indian Affairs may have the means of determining that relators, unlike altogether too many of Osage parents, are not squandering or misusing the minors' funds, the court should not by mandamus compel the respondent to make in relators' behalf any exception to the operation of the rule beneficial to all Osage minors in that it tends to conserve their estate and to preserve the wasting of their income. And in this connection, he prays the court to notice the fact that oil and gas deposits, the principal source of the wealth of the Osage Nation, are not permanent, but are fugitive and in time become exhausted; that unless there be further legislation to the contrary, the
21 Federal control of this vast business of the Osages will cease in 1931 and the property now withheld will be distributed per capita among the enrolled members of said tribe; that if parents are permitted to take and spend, without any accounting or without any control, the large incomes of their minor children (amounting from all sources to $4,121 per capita for the year 1919) the said minors upon attaining their majority will possess no property other than their reeal estate and such share of the tribal income as may then exist—which, if the oil and gas resources be then exhausted, will be nothing except $191 annual interest on the trust fund.

7. He is advised and so avers that the allegations in paragraph 7 present merely a conclusion of law which he need not answer.

Wherefore having fully answered the petition, he prays that the rule to show cause may be discharged, that the petition may be dismissed, and that he may be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior.

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

DISTRICT OF COLUMBIA, *ss:*

Franklin K. Lane, Secretary of the Interior, respondent in the above-entitled action, being first duly sworn, says that he has read over the aforegoing answer by him subscribed and knows the contents thereof; that the matters therein set forth he is informed are true and he believes them to be true.

22 FRANKLIN K. LANE,
Secretary of the Interior.

Subscribed and sworn to this 25 day of July, 1919.
Before me:
[L. S.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

(EXHIBIT A.)

Ed—Ind.
11883–17.
L. M. C.

July 17, 1917.

Mr. J. George Wright,
Supt. Osage School.

MY DEAR MR. WRIGHT:

I have received your letter of July 10, with further reference to the method of handling the payment of shares of minors in the regular quarterly payments made to the members of the Osage Tribe, and requesting that you be given instructions.

I have carefully considered your statements as to the manner in which the recent ruling requiring written accountings by the parents as to the disposition of minors' funds, has been received by the members of the tribe. With reference to the question of allowing parents to apply the payments of minors in the erection of homes or other improvements, you are advised that such a procedure does not properly come within the meaning that the funds of minors should be used for their benefit. There is a legal and moral duty resting upon parents to properly support their minor children, and the fact that such minors may have a large income does not relieve the parents of this duty, and I do not believe that the funds of the children should be paid to the parents for such use as stated above. This also applies to the case where parents desire to use the funds of minors in providing subsistence for the family. While it is reasonable that sufficient sums belonging to the minors should be used in providing for their actual needs, I do not believe that their funds should be used in providing for the family in general. If a parent is able to render a specific statement as to the amounts used from each minor's funds for the particular minor's individual benefit, this will enable me to determine as to the propriety of the
23 expenditures. However, I am not satisfied with the general statement that such amounts have been used in support of the family. I believe this position to be for the best interests of the minors, as such action will conserve the income of such minors, and make it possible to use the funds in such a manner as to provide a permanent estate, which may be paid to the minor upon the attainment of majority; otherwise the vast income of minor Osages will be entirely consumed by the parents from which only an indirect benefit will result to the minor, and upon becoming of age, nothing would remain of the income derived during his or her minority.

With reference to your inquiry as to whether the funds of enrolled minors may be used by the parents, where they have no means, in the support and education of unallotted brothers and sisters, you are advised that in such cases, you should submit a full report as to the circumstances in each case, and make a recommendation as to whether, in your opinion, it would be proper to permit of the expenditure desired. I am not inclined favorably to the expenditure of minors' funds in the purchase of automobiles or other such luxuries,

for which there is apparently no necessity. The above policy applies to the cases of parents desiring to use their children's funds in liquidating indebtedness.

I have noted your circular letter to members of the tribe with reference to the above matter, and I approve of your action, and in any case where the expenditure of a minor's share is for any purpose other than the direct benefit of said minor, application should be made to your office, and you should, in turn, submit a full report with your recommendations for requesting authority from this Office, before the expenditure is authorized. You should give careful supervision to this matter, with the view of impressing upon the adult members of the tribe the absolute necessity of living within their own incomes and of becoming independent of the funds accruing to the credit of their minor children.

Sincerely yours,

(Signed) CATO SELLS,
Commissioner.

Approved: Aug. 1, 1917.

(Signed) ALEXANDER T. VOGELSANG,
First Assistant Secretary.

24 *Reply to Respondent's Answer.*

Filed November 1, 1919.

* * * * * * *

Comes now the plaintiff, and for reply to that part of respondent's answer which does not admit the allegations of plaintiff's petition, says:

4th. Replying to the 2nd paragraph of that part of respondent's answer answering paragraph 4 of relators' petition, the relators say:

That it is true that from 1904 until the present time there has been a gradual increase in the amount of moneys received by the members of the Osage Tribe of Indians as royalty from oil and gas leases, and that the rate of royalty has been increased in that time so that now the rate of royalty on oil leases is in some instances one-sixth, and in others one-fifth, and that the right to fix the royalties on oil and gas leases is a right conferred by the Act of Congress of June 28, 1906, upon the President of the United States, and the rates of one-sixth and one-fifth above referred to, together with such bonus as the leases may bring at the time the same are made, is the royalty that has been fixed by the President that leases shall bear.

The relators further admit that there are members of the Osage Tribe of Indians who are indolent, extravagant and careless in the expenditure of money, and improvident, and that they misuse and squandor their income, but the relators say that the fact that there are members of the Osage Tribe of Indians who misuse and squandor the money paid to them as their minor children's shares, is no

reason or excuse why these relators should not be paid the annuities and royalties they are entitled to as their children's shares
25 under said Act of Congress of June 28, 1906, and in accordance therewith.

The relators further say that it is the duty of the Commissioner of Indian Affairs, under the Act of Congress of June 28, 1906, to determine whether or not the parents of minor members of the Osage Tribe of Indians are misusing and squandering the income paid to them as their minor children's shares, and whenever the Commissioner becomes satisfied that such parents are misusing and squandering said fund, then it is the duty of the Secretary of the Interior to withhold the payment of the same to them, and these relators have no objection to the Commissioner of Indian Affairs making investigation as to whether or not they are misusing and squandering their children's funds. But the relators say that the written requirement of April 26, 1917, directing the parents to make written accounting of each minor's money received by them at the previous quarterly payment, and the further requirement dated Aug. 1, 1917, attached to respondent's answer, and marked Exhibit "A", are not authorized by the Act of Congress of June 28, 1906, and are in direct conflict therewith in this, to-wit:

That said Act of Congress of June 28, 1906, directs that the minor children's money shall be paid to the parents unless the parent is misusing or squandering the same, that fact to be determined by the Commissioner of Indian Affairs. Under the above requirements, of Apr. 26, 1917, and Aug. 1, 1917, the parents are required to show that the funds of the children paid to them, under the Act of June 28, 1906, were expended and used for the direct benefit of each particular child, and the parent had no control over the same except insofar as he was expending the same for the use and benefit
26 of such child. So that a requirement such as above stated is not warranted by said Act of Congress, and is in conflict with the duty imposed upon the Commissioner of Indian Affairs requiring him to determine whether the parents are misusing or squandering the same, and the Secretary of the Interior should be directed by mandate of this Court to pay these relators the moneys coming from the shares of the minor members of their family, unless these relators in their use of the same are misusing or squandering them.

5th. Replying to that part of respondent's answer in paragraph 5 of relators' petition, the relators say:

That it is true that for two years last past they have been required to make a showing in accordance with the order of April 26, 1917, and the further order of Aug. 1, 1917, by filing a quarterly statement with the Superintendent of the Osage Indian Agency, showing that the moneys received at the last quarterly payment previous were used for the direct benefit of their children, and that each child's money was used for its own benefit, and upon such a showing they were then paid the children's part of the interest from the trust fund accumulated, and the children's part of the royalty that had accumulated from one-sixth and one-fifth of the production,

as hereinbefore set out, but that the respondent has not permitted for two years last past, and refuses to permit these relators to use said funds derived from the children's share in their own business, in the care of the family in general, and in the education and support of their said children in general.

The relators further say that notwithstanding that the Commissioner of Indian Affairs is satisfied and has been satisfied
27 that these relators have not misused or squandered the funds coming to them from the shares of their said minor children, respondent refuses to pay the same to them, and will continue to refuse to pay the same to them, except upon the showing that said funds are being used for the special benefit of each particular child, and are not being used by these relators in their own business, or for the general welfare of the family.

Relators say that they have been economical and frugal in handling the moneys entrusted to them; that they have wisely invested the same, and are now people of considerable wealth, and have at all times carefully used the funds received by them.

Answering the 2nd paragraph of the respondent's answer to paragraph 5 of relators' petition, the relators say:

That the term "bonus money" as applied to the income from oil and gas properties of the Osage Tribe of Indians, is not a term warranted by the Act of Congress of June 28, 1906, for the purpose of distinguishing between the amount of the income received on the basis of one-sixth and one-fifth of the oil produced and the additional amount of income that is paid for the oil and gas leases at the time they are made, but under said Act of Congress of June 28, 1906, the word "royalty" includes all income derived from the mineral resources of the Osage Tribe of Indians, whether it be a portion of the amount of mineral produced, or whether it be the additional amount paid for the obtaining of a lease at said rate of one-sixth or one-fifth. The income to be derived from the minerals of the Osage Tribe of Indians is an amount to be fixed by the President of the United States, under the Act of Congress of June 28,
28 1906, and is covered by and embraced within the word "royalty" found in said Act. There are but two general character of funds embraced within said Act of Congress of June 28, 1906, to be paid to members of the Osage Tribe of Indians—one is the trust fund, which was to be segregated and placed in the Treasury of the United States to the credit of each individual member of the Tribe, and the other those funds which were to be paid to the members of the Tribe without being placed in the Treasury of the United States, and which were not to be held in trust. The money termed "bonus" has been refused by the Treasurer of the United States as a trust fund on an opinion by the Comptroller to the effect that it was not of that class of funds that could be held to be trust funds, and therefore should be paid out to the parents of minors, except in cases where the parent was misusing or squandering the same.

6th. Replying to that part of respondent's answer in which he answers paragraph 6 of relators' petition, relators say:

That it is true that respondent has refused and still refuses and will refuse to pay them any part of their children's fund known as the "bonus money," under any circumstances or conditions, except under appointment as legal guardian. That the respondent has refused, refuses and will refuse to pay them any part of the other funds of their said minor children except $50.00 per month, unless they make a showing that said funds are being used for the specific benefit of each particular child.

Relators further say that they are not asking to be paid the income derived from their children's shares except in accord-
29 ance with the Act of Congress of June 28, 1906, and that they are ready and willing at all times to make proper showing to the satisfaction of the Commissioner of Indian Affairs that they have not misused or squandered said money, but that they should not be deprived of their right to receive said money and properly use the same, because some other members of the Tribe are misusing and squandering the money that is paid to them from their children's shares, and that the allegations of respondent's answer with reference to what other members of the Tribe are doing, and with reference to the necessity of controlling the funds paid to other members of the Tribe, are not material, as these relators are advised, and have nothing whatever to do with the rights of these relators to receive the funds which they are entitled to receive under said Act of Congress above referred to.

Wherefore, having fully replied to the answer of the respondent, the relators pray that they may have an order requiring the Secretary of the Interior to pay over to them the funds coming from their children's share, as prayed for in their petition.

W. T. MOSIER,
Relator.
G. V. LA BADIE,
LEAHY, MACDONALD, BURNETTE & BRITTON & GRAY,
Attorneys for Relators.

STATE OF OKLAHOMA,
County of Osage, ss:

W. T. Mosier, being first duly sworn upon his oath, says:
That he has read the foregoing reply and knows the contents thereof; that the matters therein set forth are true, as he verily believes.

W. T. MOSIER.

30 Subscribed and sworn to before me this 1st day of October, 1919.

MINNIE McLAUGHLIN,
Notary Public.

[SEAL.]

Stipulation.

Filed November 1, 1919.

* * * * * * *

It is hereby stipulated and agreed by and between the above-named relators and the above-named respondent, by their attorneys and counsel, that the following is a true and correct statement of facts in the above entitled cause, and that together with the averments and allegations of relators' petition and respondent's answer and relators' reply, may be taken as true by the court and judgment rendered thereon accordingly.

1. It is stipulated and agreed that all admitted facts in the pleadings are true. But it is understood that the respondent does not hereby admit as true the following allegations in relators' replication to the answer, save as herein stated, to wit:

(*a*) The allegation in the third paragraph, page 1, that the rates of one-sixth and one-fifth royalty, "together with such bonus as the leases may bring at the time the same are made, is the royalty that has been fixed by the President that leases shall bear;"

(*b*) The allegation in the last paragraph on page 3, to the effect that the Commissioner of Indian Affairs "is satisfied and has been satisfied that these relators have not misused or squandered the funds coming to them from the shares of their said minor children," although he does admit that at no time prior to the rendition of accounts by the relators under the order of April 26, 1917, did
31 the said Commissioner ever determine that they had misused or squandered said funds; that during the period while such accounts were rendered by the relators, said accounts showed that all the money paid to relators on account of their minor children was either providently expended for the direct use and benefit of said minors or was invested or retained for the ultimate use and benefit of said minors, and that during said period it is true that the Commissioner did not determine that relators were misusing or squandering said funds; but that during the period since relators have neglected and refused to render any accounting, the Commissioner has been without any information on which to make any determination.

(*c*) The allegations in the first paragraph on page 4, as to the manner in which relators have handled the money entrusted to them, if by that is meant the moneys paid to them on account of their minor children, other than during the period when relators made accounting to the Commissioner as set forth in the preceding paragraph *b*; and

(*d*) The allegations in paragraph 3, page 4, concerning "bonus money" in the respects in which said allegations may differ from the averments in respondent's answer.

2. It is admitted that the Commissioner of Indian Affairs has never at any time before or after the orders of April 26, 1917, or Au-

gust 1, 1917, made a finding that these relators misused or squandered the money paid to them from their minor children's shares; the circumstances in this respect being as hereinbefore set forth in this stipulation.

3. It is stipulated and agreed that at all times prior to April 26, 1917, these relators used the funds paid to them from the shares of their minor children, in their own business affairs, and in
32 the care and education of their minor children, and in the support of the family in general, and that since April 26, 1917, the Secretary of the Interior has refused to pay to them the shares of their minor children's income, except upon a showing that said income was being used for the specific benefit of each particular child, in accordance with requirements dated April 26, 1917, and August 1, 1917.

4. The term "bonus money," not found in the act of June 28, 1906, is a term designating money received from the highest bidder for the privilege of securing an oil and gas mining lease of a particular tract.

T. J. LEAHY,
F. W. CLEMENTS,
Attorneys for Relators.
CHARLES D. MAHAFFIE,
C. EDWARD WRIGHT,
Attorneys for Respondent.

Memorandum.

March 24, 1920.—Order substituting John Barton Payne as respondent in place and stead of Franklin K. Lane.

Opinion of Court.

Filed May 19, 1920.

* * * * * * *

This case came on for final hearing upon the pleadings and an agreed statement of facts, and was argued by counsel for the respective parties and submitted.

The action is one for a Writ of Mandamus to require the
33 Secretary of the Interior to pay to the Relators, as the parents of certain minor children who are duly enrolled members of the Osage Tribe of Indians,

"all moneys derived as interest on the trust fund of said minors, and all moneys that are received from the shares of said minors as royalties and income from oil and gas and other minerals belonging to said Tribe of Indians."

Two questions are presented by the case. One is whether money derived from the successful bidder for an oil lease of land belonging to the minor children of the Relators, such money being called

"bonus money," is payable to the Relators, as the royalty prescribed in the lease itself is payable to them. And the other question is whether the Respondent can limit the amount of moneys that may be received by the parents of said minor children or require the Relators to render statements of account of moneys received by them, in order that the Commissioner of Indian Affairs may satisfy himself that such moneys are not being misused or squandered by the Relators, or that if they are that further payments may be withheld.

These questions are to be answered by a consideration of the provisions of the Act of Congress, approved June 28, 1906, 34 Statutes, page 544.

This Act is a comprehensive piece of legislation having for its object the division of the lands and funds of the Osage Indians in the then Territory of Oklahoma, and it is so entitled. In effecting its object striking evidence of its policy with respect to the interests of minors having living parents, is manifest. By section 2 of the Act it is provided that selections of the lands belonging to such minors "may be made by said parents," and by the proviso of section 7, it is enacted "that parents of minor members of
34 the tribe *shall have the control and use of said minors' lands, together with the proceeds of the same,* until said minors arrive at their majority." (Underscoring by the Court) Section 4 provides that the interest to be paid by the United States on certain funds and moneys belonging to minors and held in trust for them by the government "shall be paid quarterly *to the parents* until said minors arrive at the age of twenty-one years." And by the same section it is provided that royalty received from oil and other mineral leases upon the land selected and divided as stated above, and moneys received from the sale of other specified lands shall be distributed to the individual members of the Osage Tribe "in the same manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States."

It seems clear from the foregoing resume of the material portions of the statute under consideration that it was the intention of the Congress to give to the *parents* of minor members of the Tribe the *beneficial use* of so much of their Children's property as is to be divided and distributed under the terms of the law, during the children's minority. But it is insisted by the Respondent that the socalled bonus money was not included in the distribution thus directed. Not in terms, it is true, but at the time of the enactment of the statute the practice of obtaining bonus money had not made its appearance, and did not do so until a decade later when the increasing demand for oil which it was believed existed in large and paying quantities under the surface of these Indian lands, suggested the plan of requiring prospective oil lessees to bid for leases, and the sums paid by the successful bidders for leases constitute
35 the bonus money. This money may not be royalty in the strict sense of the word, but it is certainly money derived from "oil * * * leases upon the lands," to quote the language

of the statute. No leases, no royalty. No leases, no bonus. Leases, bonus certainly, royalty perhaps, if the minerals are discovered to exist in paying quantities.

The Supreme Court has furnished us with a legal definition of the word bonus. In the case of Kendicott vs. The Supervisors, 16 Wallace, 452, 471, the Court says,

"But, secondly, the meaning of the word bonus is not that given to it by the objection. It is thus defined by Webster; 'A premium given for a loan or a charter or other privilege granted to a Company; as the bank paid a *bonus* for its charter; a sum paid in addition to a stated compensation.' It is not a gift or gratuity, but a sum paid for services, or upon a consideration in addition to or in excess of that which would ordinarily be given."

Applying that definition in the instant case it is apparent that the bonus derived from the leases is "a sum paid * * * upon a consideration in addition to or in excess of that which would ordinarily be given," the latter being royalty in its strict sense.

But did the Congress use the word in the restricted sense? It was providing in a complete manner for the making of oil and other mineral leases upon the lands of the Indians, and directed that the proceeds be distributed to the owners thereof, and in the case of minor owners the proceeds were to go, during their minority, to the parents of such minors. There is no evidence in the statute that any proceeds derived from the leases were not to be distributed as directed, except as enacted in the first proviso of section 4, hereafter to be considered in connection with the second of the two questions which this case raises.

36 The Court is of the opinion that Congress did not use the word royalty in the restricted sense, but used it in the sense of the word, "proceeds," to be distributed in the way directed. The whole scheme and structure of the Act justifies and requires this interpretation. What reason of the apparent policy of the law suggests a different interpretation? None. It gives to the parents of minors the control and *use* of the minors' lands and as well the proceeds of the same. It gives to them the royalty received from the oil leases and all other mineral leases upon said lands. What else more could it give, except complete ownership and title?

This in effect is the conclusion reached by the Comptroller of the Treasury in the following language:

"I am constrained to decide that, within the purpose and meaning of the act, bonus money received from the sale of leases for oil, etc., *should be classed with royalties* and which is required by the second exception to section 4 *to be placed in the Treasury* to the credit of the members of the Osage Tribe of Indians as other moneys of said tribes are to be deposited, *for distribution to the individual members of said Osage Tribe,* and therefore that said bonus moneys do not bear interest."

23 Decisions of Comptroller of the Treasury, Pages 483, *486.*

(Underscoring by the Court.)

For the foregoing reasons the answer to the first of the two ques-

tions propounded is, that the so-called bonus money is payable to the Relators as a part of the royalty received from oil leases.

Coming now to the second question to be answered, it is to be observed that the contention of the Respondent in this respect rests upon his interpretation of the first proviso of section 4 of the Statute; That proviso is in the following language: "Provided, That if the Commissioner of Indian Affairs becomes satisfied that the
37 said interest of any minor is being misused or squandered he may withhold the payment of such interest."

The Respondent's interpretation of this proviso takes the form of a limitation upon the use by the parents of a minor of the money of the latter paid to the former, both in respect of the amount and its application. He insists that such money can be used only for the benefit of the minor exclusively, and if not so used it would be deemed by the Commissioner of Indian Affairs as a misuse or a squander of said money, and further payments would be withheld except to the amount of $40.00 per month.

In the opinion of the Court this is an unwarrantable interpretation. It is plain that the Congress intended that the parents of minors should have the use of this money, as they are to have the use of the minors' lands and the proceeds of the same. A use, no doubt, that shall be wise, and calculated to improve the standards of their lives, to insure the education and maintenance of their children, and to produce a home environment tending to make better and more contented citizens.

To use these funds in hazardous or speculative undertakings or in lavish and extravagant expenditures would be to misuse or squander them, and in that event the restraining hands of the Commissioner of Indian Affairs could and should be laid upon them. These are the possibilities that the limitation of the proviso is designed to guard against. It was not intended to clothe the Commissioner or the Respondent with authority to dictate the limit of the amount that the parents could expend *exclusively* upon their minor children from these moneys. The Statute makes the parents, not the Commissioner or the Respondent, the judges in the first instance of the judicious use of the moneys in question. They may be used
38 in the upkeep of the family and on an increasing scale of comfort as an increasing income may justly warrant. But in order that the Commissioner may inform himself as to whether the limitation of the proviso, *as its boundaries have been marked out herein,* are observed by the parents of the minors, it will not be an unreasonable exaction to require them to furnish him periodically with full statements of the expenditure by them of the moneys of their minor children received by them pursuant to the provisions of the Statute that we have been considering.

The conclusion is that the second question must be answered to the effect that the Respondent cannot limit the amount to be paid to the Relators as the parents of their minor children from the moneys distributable to them under the law, but can require from them the submission of periodical statements of Accounts showing in detail the expenditure of the moneys so received. With this limi-

tation on the scope of the Writ of Mandamus prayed for, it will issue as prayed.

And it is so ordered.

F. L. SIDDONS,
Justice.

May 19th, 1920.

Supreme Court of the District of Columbia.

Wednesday, June 16th, 1920.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * * * *

The above case came on to be heard upon the pleadings and an agreed statement of facts, and after argument by counsel, was submitted to the Court, whereupon, the same being considered, it is this 16th day of June, 1920, ordered and adjudged that the prayers of the petition be and the same are hereby granted and the writ of mandamus be issued herein directed to the respondent, commanding him to deliver, or cause to be delivered to the plaintiffs all the moneys due their minor children, members of the Tribe of Osage Indians of Oklahoma, by reason of the distributions made in virtue of the act of June 26, 1906 (34 Stats., 539), prior to the filing of the bill in this cause including their respective shares of bonus moneys distributable as royalties under said Act.

39

Further, that the petitioners recover from the respondent the costs of suit and have judgment therefor as the same are taxed by the clerk.

From the foregoing judgment, the respondent, on the day aforesaid, in open court, notes an appeal to the Court of Appeals of the District of Columbia, and the same is hereby allowed; and pending said appeal it is further ordered that the judgment aforesaid be, and is hereby stayed, and no writ shall run thereon against the respondent until further order of the Court.

40 *Assignment of Errors.*

Filed June 16, 1920.

* * * * * * *

In the rendition of judgment in the above-entitled cause, the court erred—

(1) In granting the writ of mandamus.

(2) In holding that "bonus" money, i. e., money paid by a lessee for the privilege of a lease made under the provisions of the act of June 28, 1906 (34 Stat., 539), is "royalty" within the meaning of said act.

(3) In holding that the money or income from the share of an Osage minor, payable under said act to the parent during the minority of the child, is in effect the money or property of the parent, to be used by the parent as his own in the upkeep of the family.

(4) In failing to hold that a minor's money is not the money of the parent, and that the use of it by a parent as his own, spending it for the benefit of others than the minor child, is a misuse of the money within the meaning of the proviso to section 4 of the act.

(5) In reviewing the Commissioner of Indian Affairs in a matter committed by law to the latter's discretion and in directing the substitution of his judgment for that of the Commissioner.

(6) In not holding that the respondent may lawfully pay out, under the act of June 28, 1906, only such funds as are particularly directed by said act, and that the term "royalty," as used in said act, does not include cash paid by way of "bonus."

(7) In granting broadly the writ prayed for, after holding and deciding that the respondent has a legal right to exact periodically a full statement from the parents showing their expendi-
41 tures of the minor's money in order to enable the Commissioner to determine whether such expenditures indicate misuse or squandering of said money, on a record wherein it appears that the relators have not rendered such an accounting since the last payment made to them and, on the contrary, have neglected and refused to render any such statement.

(8) In not dismissing the petition and denying the writ of mandamus.

CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

Designation of Record.

Filed June 16, 1920.

* * * * * * *

In making up the transcript of record in the above-entitled cause, the Clerk will please to include:

1. The petition.
2. The rule to show cause.
3. The respondent's answer, including exhibits.
4. The replication.
5. The stipulation as to facts.
6. The order substituting John Barton Payne as respondent.
7. The opinion of the court.

8. The judgment, with memorandum of appeal and its allowance.
9. The assignment of errors.
42 10. This designation.

C. EDWARD WRIGHT,
Attorney for Respondent.

Service acknowledged June 16, 1920.

F. W. CLEMENTS,
Attorney for Relators.

43 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 42, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 62494 at Law, wherein The United States of America, on the relation of W. T. Mosier and Louisa Mosier are Plaintiffs and Franklin K. Lane, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 7th day of July, 1920.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
E. W.,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3422. John Barton Payne, Secretary of the Interior, appellant, vs. The United States of America on the relation of W. T. Moser and Louisa Moser. Court of Appeals, District of Columbia. Filed Jul. 8, 1920. Henry W. Hodges, Clerk.

27 Wednesday, October 6th, A. D. 1920.

JOHN BARTON PAYNE, SECRETARY OF THE Interior, appellant,
vs.
THE UNITED STATES OF AMERICA ON THE relation of W. T. Mosier and Louisa Mosier. } No. 3422.

The argument in the above-entitled cause was commenced by Mr. C. E. Wright, attorney for the appellant.

Thursday, October 7th, A. D. 1920.

JOHN BARTON PAYNE, SECRETARY OF THE Interior, appellant,
vs.
THE UNITED STATES OF AMERICA ON THE relation of W. T. Mosier and Louisa Mosier. } No. 3422.

The argument in the above-entitled cause was continued by Messrs. T. J. Leahy and F. W. Clements, attorneys for the appellees, and was concluded by Mr. C. E. Wright, attorney for the appellant.

28 In the Court of Appeals of the District of Columbia.

JOHN BARTON PAYNE, SECRETARY OF THE Interior, appellant,
vs.
THE UNITED STATES OF AMERICA OF THE relation of W. T. Mosier and Louisa Mosier, appellees. } No. 3422.

Opinion.

Mr. Justice Robb delivered the opinion of the court.

Appeal from a judgment in the court below directing the issuance of a writ of mandamus requiring the Secretary of the Interior to pay appellees moneys derived as interest on a trust fund belonging to their minor children and moneys received from the shares of those minors as royalties and income from oil, gas, and other minerals belonging to the Osage Tribe of Indians, to which appellees belong.

Being satisfied with the reasoning and conclusions of the learned trial judge, we adopt his opinion, as follows:

This case came on for final hearing upon the pleadings and an agreed statement of facts, and was argued by counsel for the respective parties and submitted.

The action is one for a writ of mandamus to require the Secretary of the Interior to pay to the relators, as the parents of certain minor children who are duly enrolled members of the Osage Tribe of Indians,

"all moneys derived as interest on the trust fund of said minors, and all moneys that are received from the shares of said minors as royalties and income from oil and gas and other minerals belonging to said Tribe of Indians."

Two questions are presented by the case. One is whether money derived from the successful bidder for an oil lease of land belonging to the minor children of the relators, such money being called
29 "bonus money," is payable to the relators, as the royalty prescribed in the lease itself is payable to them. And the other question is whether the respondent can limit the amount of moneys that may be received by the parents of said minor children or require the relators to render statements of account of moneys received by them, in order that the Commissioner of Indian Affairs may satisfy himself that such moneys are not being misused or squandered by the relators, or that if they are that further payments may be withheld.

These questions are to be answered by a consideration of the provisions of the act of Congress approved June 28, 1906, 34 Statutes, page 544.

This act is a comprehensive piece of legislation having for its object the division of the lands and funds of the Osage Indians in the then Territory of Oklahoma, and it is so entitled. In effecting its object striking evidence of its policy with respect to the interests of minors having living parents is manifest. By section 2 of the act it is provided that selections of the lands belonging to such minors "may be made by said parents," and by the proviso of section 7 it is enacted "that parents of minor members of the tribe *shall have the control and use of said minors' lands, together with the proceeds of the same*, until said minors arrive at their majority." (Underscoring by the court.) Section 4 provides that the interest to be paid by the United States on certain funds and moneys belonging to minors and held in trust for them by the Government "shall be paid quarterly to the parents until said minors arrive at the age of twenty-one years." And by the same section it is provided that royalty received from oil and other mineral leases upon the land selected and divided as stated above, and moneys received from the sale of other specified lands shall be distributed to the individual members of the Osage Tribe "in the same manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States."

It seems clear from the foregoing résumé of the material portions of the statute under consideration that it was the intention of the Congress to give to the parents of minor members of the tribe the beneficial use of so much of their children's property as is to be divided

and distributed under the terms of the law, during the children's minority. But it is insisted by the respondent that the so-called bonus money was not included in the distribution thus directed. Not in terms, it is true, but at the time of the enactment of the statute the practice of obtaining bonus money had not made its appearance, and did not do so until a decade later, when the increasing demand for oil, which it was believed existed in large and paying quantities under the surface of these Indian lands, suggested the plan of requiring prospective oil lessees to bid for leases, and the sums paid by the successful bidders for leases constitute the bonus money. This money may not be royalty in the strict sense of the word, but it is certainly money derived from "oil * * * leases upon the lands," to quote the language of the statute. No leases, no royalty. No leases, no bonus. Leases, bonus certainly, royalty perhaps, if the minerals are discovered to exist in paying quantities.

The Supreme Court has furnished us with a legal definition of the word bonus. In the case of Kendicott vs. The Supervisors, 16 Wallace, 452, 471, the court says:

"But, secondly, the meaning of the word bonus is not that given to it by the objection. It is thus defined by Webster: 'A premium given for a loan or a charter or other privilege granted to a company; as the bank paid a *bonus* for its charter; a sum paid in addition to a stated compensation.' It is not a gift or gratuity, but a sum paid for services, or upon a consideration in addition to or in excess of that which would ordinarily be given."

Applying that definition in the instant case it is apparent that the bonus derived from the leases is "a sum paid * * * upon a consideration in addition to or in excess of that which would ordinarily be given," the latter being royalty in its strict sense.

But did the Congress use the word in the restricted sense? It was providing in a complete manner for the making of oil and other mineral leases upon the lands of the Indians, and directed that the proceeds be distributed to the owners thereof, and in the case of minor owners the proceeds were to go, during their minority, to the parents of such minors. There is no evidence in the statute that any proceeds derived from the leases were not to be distributed as directed, except as enacted in the first proviso of section 4, hereafter to be considered in connection with the second of the two questions which this case raises.

The court is of the opinion that Congress did not use the word royalty in the restricted sense, but used it in the sense of the word "proceeds," to be distributed in the way directed. The whole scheme and structure of the act justifies and requires this interpretation. What reason of the apparent policy of the law suggests a different interpretation? None. It gives to the parents of minors the control and *use* of the minors' lands and as well the proceeds of the same. It gives to them the royalty received from the oil leases and all other mineral leases upon said lands. What else more could it give, except complete ownership and title?

This, in effect, is the conclusion reached by the Comptroller of the Treasury in the following language:

"I am constrained to decide that, within the purpose and meaning of the act, bonus money received from the sale of leases for oil, etc., *should be classed with royalties* and which is required by the second exception to section 4 *to be placed in the Treasury* to the credit of the members of the Osage Tribe of Indians as other moneys of said tribes are to be deposited, *for distribution to the individual members of said Osage Tribe*, and therefore that said bonus moneys do not bear interest."

23 Decisions of Comptroller of the Treasury, pages 483, *486*.

(Underscoring by the court.)

For the foregoing reasons the answer to the first of the
31 two questions propounded is, that the so-called bonus money is payable to the relators as a part of the royalty received from oil leases.

Coming now to the second question to be answered, it is to be observed that the contention of the respondent in this respect rests upon his interpretation of the first proviso of section 4 of the statute; that proviso is in the following language: "Provided, That if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest."

The respondent's interpretation of this proviso takes the form of a limitation upon the use by the parents of a minor of the money of the latter paid to the former, both in respect of the amount and its application. He insists that such money can be used only for the benefit of the minor exclusively, and if not so used it would be deemed by the Commissioner of Indian Affairs as a misuse or a squander of said money, and further payments would be withheld except to the amount of $40.00 per month.

In the opinion of the Court this is an unwarrantable interpretation. It is plain that the Congress intended that the parents of minors should have the use of this money, as they are to have the use of the minors' lands and the proceeds of the same—a use, no doubt, that shall be wise, and calculated to improve the standards of their lives, to insure the education and maintenance of their children, and to produce a home environment tending to make better and more contented citizens.

To use these funds in hazardous or speculative undertakings or in lavish and extravagant expenditures would be to misuse or squander them, and in that event the restraining hands of the Commissioner of Indian Affairs could and should be laid upon them. These are the possibilities that the limitation of the proviso is designed to guard against. It was not intended to clothe the commissioner or the respondent with authority to dictate the limit of the amount that the parents could expend exclusively upon their minor children from these moneys. The statute makes the parents, not the commissioner or the respondent, the judges in the first instance of the

judicious use of the moneys in question. They may be used in the upkeep of the family and on an increasing scale of comfort as an increasing income may justly warrant. But in order that the commissioner may inform himself as to whether the limitation of the proviso, as its boundaries have been marked out herein, are observed by the parents of the minors, it will not be an unreasonable exaction to require them to furnish him periodically with full statements of the expenditure by them of the moneys of their minor children received by them pursuant to the provisions of the statute that we have been considering.

The conclusion is that the second question must be answered to the effect that the respondent can not limit the amount to be paid to the relators as the parents of their minor children from the moneys distributable to them under the law, but can require from them the submission of periodical statements of accounts showing in detail the expenditure of the moneys so received. With this limitation on the scope of the writ of mandamus prayed for, it will issue as prayed.

And it is so ordered.

F. L. SIDDONS,
Justice.

The judgment is affirmed, with costs.

32 In the Court of Appeals of the District of Columbia.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR, appellant,
vs.
UNITED STATES EX REL. W. T. MOSIER ET AL. } No. 3422.

Dissenting opinion by Mr. Chief Justice Smyth.

This appeal is not for the purpose of determining finally the rights of the parents and the children to the money in question. We may inquire only as to whether the Secretary's decision has any support in the record. If it has, then his judgment, not ours, must prevail; in other words, unless he acted arbitrarily, we may not disturb his conclusion. Ashley v. Roper, 48 App. D. C., 69; Brougham v. Blanton Manufacturing Co., 149 U. S., 495, and Sykes v. Lane, 47 W. L. R., 299. In the recent case of the United States Ex Rel. Hall v. Payne, decided December 13, 1920, the Supreme Court of the United States said that where the action of the Secretary "was not arbitrary or capricious, but rested on a possible construction of the act," it would be affirmed.

The controversy seems to hinge upon whether or not a bonus is necessarily within the meaning of the word "royalties." It is according to the opinion of the court, but the definition of a bonus given therein does not support its conclusion. It says that a bonus may be considered as a "sum paid * * * upon a consideration in

addition to or in excess of that which would ordinarily be given." The record shows that royalty is what would ordinarily be given. A bonus is something in excess of it. Does not the statute lend itself to this interpretation?

33 Moreover, is there not room for the belief that, as applied to oil lands, a royalty does not include a bonus? A writer upon the subject says: "The consideration which the lessee pays for the lease must not be confounded with the consideration which the lessor is to receive for the oil and gas. The cash consideration, bonus, or whatever it may be called, paid or agreed to be paid by lessee for the lease, is a consideration for the exclusive privilege of entry for exploration. * * * When lessee discovers oil or gas in paying quantities, his right to produce them becomes a vested right. He is then, for the first time, authorized and obligated to pay the consideration to lessor for the exclusive vested right to produce the oil and gas, the true consideration for such minerals being the royalty of oils and cash rental for gas, as the case may be." Archer's Law and Practice in Oil and Gas Cases, page 44. See also Brookshire Oil Co. v. Casmalia Oil and Development Co., 103 Pac., 927, and Venture Oil Co. v. Fretts, 152 Pa., 451. This clearly indicates that there is a wide difference between a royalty and a bonus.

For the purpose of interpreting the act we may look at the conditions existing, and presumably known to Congress, at the time it was passed. United States v. Union Pacific R. R. Co., 91 U. S., 72; Siemens's Administrator v. Sellers, 123 U. S., 276, and Smith v. Townsend, 148 U. S., 490. At that time bonuses were not resorted to in the Osage country. They did not come into existence until the expiration in 1916 of what is known as the Foster leases, hence were not within the contemplation of Congress at that time. Of course, if the language used clearly embraces them, the fact that they were not then in vogue would be, perhaps, immaterial; but if it does not, the Secretary, as the person charged with the administration of the act, would be justified under the circumstances, to
34 be noticed immediately, in refusing to stretch the language so as to include them.

When the act was passed the portion which each child derived from its lands annually was about $256—not more than was necessary for its support—but in 1920 the sum coming to it from interest and royalty alone was about $3,551, and from bonuses $4,730, making a total of $8,821 a year. May it not be said with reason that while Congress was willing to entrust to the parents annually $256, or thereabouts, for each minor child, to be used for its benefit—for we can not assume, in the absence of a specific direction on the subject, that Congress intended that the child's money should be used for any other purpose—it was not within its contemplation that the parents should have more than the support and education of the child required. The act provides in specific language for the payment to the parents of the royalties, and that must be done, though the

amount is now much greater than then. But, unless bonuses come clearly within the definition of "royalties," and I have shown they do not, would it not be greatly in the interest of the child if this fund arising from bonuses, like other funds covered by the act, should be conserved by being deposited on interest until the child had reached its majority? Why did Congress provide for the payment of some of the child's money to the parents and for the deposit of the remainder during the child's minority unless it was intended that only so much as was necessary for the purposes of the child should be available to the parents? Considering the statute in the light of these circumstances I do not think it can be correctly said that the Secretary acted arbitrarily in holding that it would be more in keeping with the congressional purpose, as expressed in the act, to
35 treat bonuses as a fund, not to be distributed as royalties, but to be deposited in the Treasury as other funds are required to be deposited under the act, or to be conserved in some other way, during the minority of the child.

The proviso giving to the Commissioner of Indian Affairs the right to withhold payments from the parents if he becomes satisfied that the money is being misused or squandered, carries with it the incidental right to make such rules and regulations as may be necessary to effectively carry out the purposes of the act. "Misused" means not used for the proper purpose. It is the minor's money that is paid to the parents, and, if used for the benefit of anyone else, it is misused. To require that an account should be rendered to the commissioner showing the purposes for which the money was spent seems to be within the scope of the Secretary's authority under the statute, and hence he would be justified in withholding payments so long as the parents refused to make such statements.

Believing that the Secretary did not act arbitrarily, but within the discretion lodged in him by Congress, I think the judgment of the lower court should be reversed, and hence I dissent.

36 Monday, January 3rd, A. D. 1921.

January Term, 1921.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR, appellant,

vs.

THE UNITED STATES OF AMERICA ON THE RELATION OF W. T. Mosier and Louisa Mosier.

No. 3422.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and

adjudged by this court that the judgment of the said Supreme Court, in this cause, be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE ROBB.

January 3, 1921.

Mr. Chief Justice Smyth dissents.

37 In the Court of Appeals of the District of Columbia.

Jan. T., 1921.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR,
v.
U. S. EX REL. W. T. MOSIER ET AL. } No. 3422.

Petition for allowance of writ of error.

Comes now John Barton Payne, Secretary of the Interior, appellant in the above entitled cause, by his attorneys, and respectfully shows that on or about the 3rd day of January, 1921, this court entered a judgment herein in favor of the appellees and against the appellant, affirming a judgment of the Supreme Court of the District of Columbia in favor of said appellees, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellant, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellant further shows that the said judgment of this court is subject to review by the Supreme Court of the United States under the provisions of the first paragraph of section 250 of the Judicial Code in that the jurisdiction of the trial court to review the appellant and to grant the writ of mandamus prayed in behalf of appellees is in issue.

The appellant further shows that said judgment is subject to review by the Supreme Court of the United States under the provisions of the fifth paragraph of said section 250, in that the validity of an authority exercised under the United States and the ex-
38 istance and scope of a power or duty of the appellant, an officer of the United States, are drawn in question.

The appellant further shows that said judgment is subject to review by the Supreme Court of the United States under the provisions of the sixth paragraph of said section 250, in that the proper construction of an act of Congress, to wit, the act of June 28, 1906 (34 Stat., 539), is drawn in question by the appellant, who was the defendant below:

Wherefore he prays that a writ of error may issue removing this cause to the Supreme Court of the United States for the correction of the errors assigned; that a transcript of the record, proceedings, and papers in the cause, duly authenticated, may be sent to the

Supreme Court of the United States; and that the mandate of this court be stayed until further order.

JOHN BARTON PAYNE,
Secretary of the Interior.

By his attorneys:
CHARLES D. MAHAFFIE,
Solicitor.
C. EDWARD WRIGHT,
Assistant Attorney.

39 In the Court of Appeals of the District of Columbia.

January T., 1921.

JOHN BARTON PAYNE, SECRETARY OF THE INTERIOR,
v.
U. S. EX REL W. T. MOSIER ET AL. } No. 3422.

Assignment of errors.

Come now the appellant by his attorneys and says that in the record and proceedings of the Court of Appeals had herein, and in the rendition of the final judgment in the above-entitled cause, manifest error has intervened to the prejudice of the appellant, in this, to wit:

1. That the court erred in affirming the judgment granting appellees the writ of mandamus.

2. That the court erred in taking jurisdiction to review the Secretary of the Interior in his judgment as to the proper construction of the act of June 28, 1906, a statute which it was his duty to administer, and to require the substitution of the court's judgment as to the construction of said statute for his own.

3. That the court erred in holding that "bonus" money, i. e., money paid by a lessee for the privilege of a lease made under the provisions of the act of June 28, 1906 (34 Stat., 539), is "royalty" within the meaning of said act.

40 4. That the court erred in holding that the money or income from the share of an Osage minor child, payable under said act to the parent during the minority of the child, is in effect the money or property of the parent, to be used by the parent as his own in the upkeep of the family or in his own business, and in failing to hold that said money is the minor's money and that any use thereof for the benefit of others than said minor is a misuse of the money within the meaning of the proviso to section 4 of said act.

5. That the court erred in granting broadly the writ prayed for, after holding and deciding that appellant has a legal right to exact periodical statements from parents showing their use of the minor's

money in order to enable the Commissioner of Indian Affairs to determine whether said money has been misused or squandered, on a record which shows that the appellee had rendered no such accounting since the last payment made to them and had neglected and refused to render such a statement.

6. That the court erred in not reversing the lower court and directing that the petition for mandamus should be dismissed.

JOHN BARTON PAYNE,
Secretary of the Interior.

By his attorneys:
CHARLES D. MAHAFFIE, *Solicitor,*
C. EDWARD WRIGHT, *Assistant Attorney.*

(Endorsed:) No. 3422. John Barton Payne, Secretary of the Interior, appellant, vs. U. S. ex rel. W. T. Mosier et al. Petition for writ of error and assignment of errors. Court of Appeals of the District of Columbia. Filed January 12, 1921. Henry W. Hodges, clerk.

41 Friday, January 14th, A. D. 1921.

JOHN BARTON PAYNE, SECRETARY OF THE Interior, appellant,
vs.
THE UNITED STATES OF AMERICA ON THE relation of W. T. Mosier and Louisa Mosier.
No. 3422.

On consideration of the petition for the allowance of a writ of error to remove the above-entitled cause to the Supreme Court of the United States, it is ordered by the court that said writ issue as prayed. And it is further ordered that the mandate in said cause be, and the same is hereby, stayed until further order.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the Justices of the Court of Appeals of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between John Barton Payne, Secretary of the Interior, appellant, and the United States of America on the relation of W. T. Mosier and Louisa Mosier, appellees, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 14th day of January, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

43 UNITED STATES OF AMERICA, *ss:*

To the United States of America on the relation of W. T. Mosier and Louisa Mosier, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein John Barton Payne, Secretary of the Interior, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Constantine J. Smyth, chief justice of the Court of Appeals of the District of Columbia, this 14th day of January, in the year of our Lord one thousand nine hundred and twenty-one.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals
of the District of Columbia.

Service acknowledged Jan. 18, 1921.

F. W. CLEMENTS,
Counsel for W. T. Mosier et al.

44 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 43, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of John Barton Payne, Secretary of the Interior, appellant, vs. The United States of America on the relation of W. T. Mosier and Louisa Mosier, No. 3422, January

term, 1921, as the same remain upon the files and records of sa
Court of Appeals.

In testimony whereof I hereunto subscribe my name and af
the seal of said Court of Appeals at the city of Washington th
18th day of January, A. D. 1921.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

(Indorsement on cover:) File No. 28050. District of Columb
Court of Appeals. Term No. 693. John Barton Payne, Secreta
of the Interior, plaintiff in error, vs. The United States of Ameri
on the relation of W. T. Mosier and Louisa Mosier. Filed Janua
21, 1921. File No. 28050.